

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. Claims 41-65 have been cancelled without prejudice. Claims 5-11, 14-15, 20-22, and 36-39 have been withdrawn with traverse. Claims 5, 8-10, 12, 14-15, 20, 36, and 39 have been amended, and new Claims 66-81 have been added to present claims of varying scope. No new matter has been added. Accordingly, Claims 1-40 and 66-81 will be pending in the present application upon entry of this Amendment and Reply, with Claims 1-4, 12-13, 16-19, 23-35, and 66-81 currently being considered by the Examiner.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

On page 2 of the Office Action, the Examiner required restriction under 35 U.S.C. § 121 to one of the following groups: Group I (Claims 1-40); Group II (Claims 41-56); and Group III (Claims 57-65).

Applicant hereby elects Group I (Claims 1-40). Claims 41-65 have been cancelled without prejudice.

The Examiner also stated at pages 4-5 of the Office Action that:

The application contains claims directed to the following patentably distinct species of the claimed invention:

- I. the hydrocolloid materials recited in claim 5;
- II. the nutrients recited in claims 10 and 11;
- III. the humectants recited in claim 14;
- IV. the anti-bacterial agents recited in claim 15;
- V. the viable matter components: mold spores, insects, insect parts, skin cells, virus, bacteria, anthrax, mold, fungus;

VI. the suspension medium/substance components recited in claims 36 and 37 (also recited in claims 45 and 46).

Applicant is required under 35 U.S.C. § 121 to elect a **single** disclosed species from each of I-VII [sic] above, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 29, 41, and 57 are generic.

If applicant elects algal type hydrocolloid materials as the species of I, applicant should elect one of the algal type hydrocolloid materials recited in claim 6.

If applicant elects botanical type hydrocolloid materials as the species of I, applicant should elect one of the botanical type hydrocolloid materials recited in claim 7.

If applicant elects microbial type hydrocolloid materials as the species of I, applicant should elect one of the microbial type hydrocolloid materials recited in claims 8 and 9.

The Applicant respectfully traverses the requirement that the Applicant elect species as indicated above. Nevertheless, in order to advance prosecution, the Applicant has elected various species as outlined in the paragraphs which follow. To simplify prosecution, where a species has been elected, the Markush claim from which the election has been made is shown herein as being withdrawn and amended to remove the elected species; a new claim reciting only the elected species is then correspondingly added. The Applicant respectfully requests that upon allowance of a generic claim, the withdrawn claims that recite non-elected species be rejoined in the application and allowed by the Examiner.

A. With respect to the species of I, the Applicant hereby elects, with traverse, microbial type hydrocolloid materials. Claim 5 has been withdrawn and amended to delete “microbial type hydrocolloid materials.” New Claim 66 has been added and recites that the hydrocolloid is a microbial type hydrocolloid material. Additionally, Claims 6-7 and 9 have been withdrawn (Claim 9 has also been amended to correct a typographical error included therein) as being directed to non-elected species.

B. In view of Applicant’s election of “microbial type hydrocolloid materials,” the Applicant has elected xanthan from Claim 8. Claim 8 has been withdrawn and

amended to delete the reference to “xanthan.” New Claim 67 recites that the microbial type hydrocolloid material comprises xanthan.

C. With respect to the species of II, the Applicant hereby elects, with traverse, protein. Claims 10 and 11 have been withdrawn, and Claim 10 has been amended to delete the reference to “protein.” New Claim 68 recites that the nutrient is protein. It should also be noted that Claim 12 has been amended to depend from dependent Claim 4 (since dependent Claim 10 has been withdrawn).

D. With respect to the species of III, the Applicant hereby elects, with traverse, polyols. Claim 14 has been withdrawn and amended to delete the reference to “polyols.” New Claim 69 recites that the humectant is a polyol.

E. With respect to the species of IV, the Applicant hereby elects, with traverse, chloramphenicol. Claim 15 has been withdrawn and amended to delete the reference to “chloramphenicol.” New Claim 70 recites that the anti-bacterial agent is chloramphenicol.

F. With respect to the species of V, the Applicant hereby elects, with traverse, mold spores. Claim 20 has been withdrawn and amended to delete the reference to “mold spores.” New Claim 71 recites that the viable matter comprises mold spores. Similarly, Claim 39 has been withdrawn and amended to delete the reference to “a mold spore.” New Claim 73 recites that the viable matter comprises a mold spore. Additionally, Claims 21-22 and 38 have been withdrawn.

G. With respect to the species of VI, the Applicant hereby elects, with traverse, starch. Claim 36 has been withdrawn and amended to delete the reference to “starch.” New Claim 72 recites that the suspension medium comprises water and starch. Claim 37 has also been withdrawn.

The Applicants also note that new Claims 74-81 are being added to present claims of varying scope. New Claim 74 is in independent form, with Claims 75-81 being dependent thereon. The various dependent claims include species which fall within the scope of the

elected species described above. For example, new Claim 75 recites the use of a microbial type hydrocolloid material, as elected in paragraph "A" above; new Claim 77 recites the use of a protein, as elected in paragraph "C" above; and new Claim 78 recites the use of an antibacterial agent comprising chloramphenicol, as elected in paragraph "E" above. Entry and consideration of new Claims 74-81 is respectfully requested.


The Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date 12/1/2005

By 

FOLEY & LARDNER LLP
Customer Number: 26371
Telephone: (313) 234-7150
Facsimile: (313) 234-2800

Marcus W. Sprow
Attorney for Applicant
Registration No. 48,580